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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 JOSEPH WILLIAM DROPALSKI,

9 Petitioner,

10 v.

11 BELINDA STEWART,

12 Respondent.

Case No. C06-5697 FDB

ORDER DENYING CERTIFICATE
OF APPEALABILITY

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14 This matter comes before the Court on petition for certificate of appealability.

15 On June 1, 2007, this Court denied Petitioner's post-conviction habeas corpus petition as
16 time barred. Petitioner has filed a notice of appeal of that Order which this Court placed on the
17 calendar as a petition for certificate of appealability.

18 A court will issue a certificate only when a petitioner has made "a substantial showing of the
19 denial of a constitutional right ." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the
20 constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The
21 petitioner must demonstrate that reasonable jurists would find the district court's assessment of the
22 constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). A petition
23 dismissed on procedural grounds has two components, one directed at the underlying constitutional
24 claims and one directed at the district court's procedural holding. Id., at 484-85. Where the district
25 court dismisses a petition on procedural grounds, a certificate of appealability "should issue when the
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1 prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a
2 valid claim of the denial of a constitutional right and that jurists of reason would find it debatable
3 whether the district court was correct in its procedural ruling.” Id., at 484.

4 Petitioner has not met this burden. Petitioner’s assertion that he is entitled to “gap tolling”
5 and/or relief from the federal habeas corpus statute of limitations contained in the Antiterrorism and
6 Effective Death Penalty Act, 28 U.S.C. 2244(d), is unpersuasive. The procedural bar is not
7 debatable and Petitioner cannot demonstrate cause or actual prejudice. Additionally, it is not
8 debatable that Petitioner cannot demonstrate actual innocence. Petitioner fails to set forth a
9 debatable claim as to either a procedural bar or denial on the merits.

10 ACCORDINGLY;

11 The Certificate of Appealability is **DENIED**.

13 DATED this 13th day of July, 2007.

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16 FRANKLIN D. BURGESS
17 UNITED STATES DISTRICT JUDGE
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